

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LEO HABERER,

Plaintiff,

v.

NANCY A. BERRYHILL,
acting Commissioner of Social Security,

Defendant.

16-CV-892
ORDER

On November 4, 2016, the plaintiff commenced this action. Docket Item 1. On March 3, 2017, the Court referred this case to United States Magistrate Judge Hugh B. Scott for all proceedings under 28 United States Code Section 636(b)(1)(B). Docket Item 8. On June 1, 2017, the plaintiff moved for judgment on the pleadings, or, in the alternative, to remand the matter for a new hearing. Docket Item 12. On August 1, 2017, the defendant responded to the plaintiff's motion and moved for judgment on the pleadings. Docket Item 14. On October 24, 2017, Judge Scott issued a Report and Recommendation finding that the plaintiff's motion should be granted and that the defendant's motion should be denied. Docket Item 16. The parties did not object to the Report and Recommendation, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's recommendation to which objection is made. 28 U.S.C. § 636(b)(1);

Fed. R. Civ. P. 72(b)(3). But neither 28 United States Code Section 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Scott's Report and Recommendation as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge Scott's recommendation to grant the plaintiff's motion and deny the defendant's motion.

For the reasons stated above and in the Report and Recommendation, the plaintiff's motion for judgment on the pleadings or, in the alternative, to remand for a new hearing, Docket Item 12, is GRANTED; the defendant's motion for judgment on the pleadings, Docket Item 14, is DENIED; the decision of the Commissioner is REVERSED; and this matter is REMANDED for further administrative proceedings. The Clerk of the Court is instructed to close the file.

SO ORDERED.

Dated: November 27, 2017
Buffalo, New York

s/Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE